UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of THE WALT DISNEY COMPANY, Petitioner, -against- NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, THE BROADCASTING AND CABLE TELEVISION WORKERS SECTOR OF THE COMMUNICATION WORKERS OF AMERICA, LOCAL 16, AFL-CIO, CLC, Respondent.	Civil Action No. 10 Civ. 5982 (SHS) DECLARATION OF MARY MOONEY

MARY MOONEY, declares under penalty of perjury as follows:

1. I am an attorney duly admitted to practice before the Courts of this state and Senior Counsel in the Labor Relations Department of ABC Inc. I submit this Declaration in further support of Petitioner The Walt Disney Company's ("TWDC") motion to quash the subpoena duces tecum, dated July 20, 2010 (the "Subpoena"), directed to me in my capacity as counsel for ABC Inc. I also submit this Declaration in opposition to the cross-motion of Respondent National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communication Workers of America, Local 16, AFL-CIO, CLC ("NABET-CWA, Local 16") to compel TWDC and ABC Inc. to comply with the Subpoena. I have personal knowledge of the facts stated herein, unless otherwise indicated.

2. The August 9, 2010 Affidavit of David Mintz, counsel for NABET-CWA, Local 16 is inaccurate in a number of respects. Contrary to Mr. Mintz, I am not legal counsel to TWDC, and have not and do not represent TWDC, Grace Yang, or any other TWDC employee in the pending arbitration between NABET-CWA, Local 16 and ABC Inc. concerning the termination of Scott Pinkava. To the contrary, as senior counsel in ABC Inc.'s Labor Relations department and trial counsel at the arbitration, the only entity that I am authorized to and do represent is ABC Inc.

3. Respondent apparently fails to appreciate the difference between calling someone as a fact witness and representing them as an attorney. Ms. Yang was called as a fact witness on ABC Inc.'s case in chief because she participated in the joint investigation TWDC and ABC Inc. conducted upon receipt of the Studio's complaint that one of its screeners had been uploaded to the internet without its permission. TWDC's Management Audit department agreed, upon the request of ABC Inc.'s Labor Relations department, that Ms. Yang would appear as a fact witness. Ms. Yang is one of many fact witnesses ABC Inc. has called or will call during its case to prove that Mr. Pinkava was terminated for just cause.

4. Respondent also fails to appreciate the difference between an appearance as a fact witness in a proceeding and a privilege objection interposed on behalf of a privilege holder. Contrary to respondent and as the arbitrator herself has already recognized, TWDC is not a signatory to the collective bargaining agreement between respondent and ABC Inc. and is not a party to the arbitration. Nevertheless, because of the involvement of ABC Inc.'s Labor Relations department in the investigation, I was aware of the existence of a written privileged attorney client communication between Ms. Yang and Jacob M. Yellin, in house corporate legal counsel for TWDC, that contained a summary of the investigation as well as certain analyses,

conclusions and recommendations (the "Memorandum") and seeking Mr. Yellin's legal advice. When it became clear during Ms. Yang's June 23, 2010 testimony that Mr. Mintz was asking about that document and seeking its production, I interposed TWDC's claim, on TWDC's behalf, that the document was protected from disclosure from the attorney client privilege. At no time did I suggest or imply by that objection that TWDC was appearing in the arbitration, that I was representing TWDC because I properly asserted a privilege objection or that ABC Inc. and TWDC were acting as "one" company in the arbitration, as respondent wrongly contends. *See* transcript of June 23, 2010 arbitration hearing ("June 23 Tr."), at 148:21-149:4; 145:22-146:12, copies of the cited pages of which are annexed hereto collectively as Exhibit 1.

5. Nor did I state on the record during the hearing or during the July 7, 2010 telephone conference with the arbitrator, that the document ABC Inc. introduced into evidence as Employer Exhibit 8 was extracted from the Memorandum. To the contrary, as Ms. Yang confirmed during her July 13, 2010 testimony, there were two documents with findings related to the investigation: the computer forensic reported prepared by Tim Gruber (the "Gruber Report") and the Memorandum. Ms. Yang repeatedly confirmed that Employer Exhibit 8 was extracted solely from the Gruber Report and not the Memorandum. A copy of the Gruber Report was produced to respondent, which respondent then introduced into evidence during the July 13, 2010 hearing as Union Exhibit 3. Thus, respondent's claims that ABC Inc. "selectively" disclosed privileged information lacks basis.

6. Respondent had access to all of the underlying facts of the investigation in at least three ways. As set forth in Ms. Yang's August 4, 2010 Affidavit, the investigation was comprised of a forensic review of emails and computer hard drives and fifteen employee interviews. With one exception -- David Chernak -- all of the employees interviewed were

represented by NABET-CWA, Local 16. Accordingly, other than Mr. Chernak's interview, at which it had no right to be present, representatives of NABET-CWA, Local 16 were invited to attend the interviews of the employees it represented, and, in fact, attended six such interviews. An example of one such invitation is annexed hereto as Exhibit 2. With respect to Mr. Chernak, ABC Inc. provided respondent with Ms. Yang's notes of her interview of Mr. Chernak as well as all forensic evidence and other non-privileged reports concerning Mr. Chernak. A copy of my July 9, 2010 letter to Mr. Mintz setting forth the additional materials being produced to NABET-CWA, Local 16 is annexed hereto as Exhibit 3. Respondent has also been provided with copies of Ms. Yang's interview notes for employees other than Mr. Chernak. *Id.* Finally, respondent has been provided with copies of or access to all forensic evidence and non-privileged reports concerning the investigation. *See, e.g., id.* Mr. Gruber did not prepare any additional forensic report aside from the reports he prepared regarding Mr. Pinkava and Mr. Chernak which have already been provided to NABET-CWA Local 16. Thus, NABET-CWA, Local 16's contention before this Court on August 16, 2010 that it has not received all of Mr. Gruber's reports or other forensic reports is incorrect. With the exception of the privileged Memorandum, all of the "reports" generated during the investigation have been provided to respondent.

7. With respect to respondent's claim that it is entitled to the disciplinary or other recommendations of ABC Inc.'s management concerning the employee misconduct revealed during the investigation, we note that, even without regard to the privilege issue, during a July 7, 2010 conference call, the arbitrator ruled that the recommendations are not relevant and that respondent is not entitled to discovery of them. *See, e.g.* my July 8, 2010 email to David Mintz, a copy of which is annexed hereto as Exhibit 4.

8. Significantly, Ms. Yang's report did not result in Mr. Pinkava's termination or any of the disciplinary of action the American Broadcasting Companies, Inc. imposed on any other employees that Ms. Yang interviewed in this investigation for that matter. This is also reflected in the record of the arbitration proceeding. Ms. Yang testified that she, "I did not recommend – I don't take part in the disciplinary action." Exhibit 5, July 13, 2010 Tr. at 219:12-13. Arbitrator Weinstock acknowleged this. At the July 13, 2010 arbitration, Arbitrator Weinstock stated as follows regarding Ms. Yang, "She is also not the decision maker. She didn't recommend the decision so her opinion is nothing more than her opinion. However schooled it may be, it is not the basis of what happened to Mr. Pinkava." *See* Transcript of the July 13, 2010 arbitration hearing at 229:6-11 (emphasis added), copies of the cited pages of which are annexed hereto as Exhibit 5.

9. Contrary to respondent, service of the Subpoena was not accepted on behalf of ABC, TWDC, and Ms. Yang. The Subpoena is to ABC Inc. and that is the entity upon behalf of which service was accepted. In this regard, I agreed to accept service of the Subpoena as a professional courtesy to respondent's counsel and did so before a copy of the Subpoena had been received.

10. Finally, I note that ABC Inc. was not served with process in the removed special proceeding either pursuant to New York Civil Practice Laws and Rules or the Federal Rules of Civil Procedure.

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that foregoing is true and correct. Executed by me at New York, New York on August 17, 2010.

MARY MOONEY

In Nre THE WALT DISNEY CO., v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Mooney Declaration

Exhibit 1

ARBITRATION

In the matter between:	)	
	)	
NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS -- CWA LOCAL 16, AFL-CIO, CLC	)	No. AN10-11
-and-	)	
AMERICAN BROADCAST COMPANY, INC.	)	
------------------------------	)	

77 West 66th Street

New York, New York

Thursday, June 23, 2010

B E F O R E:

BONNIE SIBER WEINSTOCK, Arbitrator

Reported by:
PENNY SHERMAN
JOB NO. 311070

Voir dir -- Yang

Q. Okay.

A. So we extracted Scott Pinkava's evidence here.

Q. So this was done in preparation for this arbitration?

A. Correct.

MR. MINTZ: Okay. Madam Arbitrator, I don't have a problem with this document coming in for what it is, which is a document prepared from other documents, investigatory documents which were prepared for this arbitration and for the union's review for this arbitration, after making a request.

But, I will only -- but I want it -- I want it to be known that we are going to ask for the original investigatory documents from which this was created --

THE ARBITRATOR: Understood.

MR. MINTZ: -- prior to cross-examination.

MS. MOONEY: Well, I'd like to address that now. This is a privileged document. That document was prepared for the company's legal team in order to obtain legal advice

Voir dir -- Yang

with respect to the implications of the evidence and findings here at the company regarding the activities of these employees and for the company to make its decisions with respect to that in that regard.

It also contains the recommendations of various management personnel. Our position is that there are many grounds above and beyond privilege under which the union is not permitted to see any particular earlier reports.

THE ARBITRATOR: Since the -- since the -- just a moment.

MR. MINTZ: Okay.

THE ARBITRATOR: Since the voir dir indicates that this Employer Exhibit 8 was not prepared, and therefore, could not have been considered prior to the decision to impose discipline, perhaps you would like to withdraw the document.

MS. MOONEY: No, I would not like to withdraw the document. The document contains various data compilations summarizing the company's findings, as well as additional

Voir dir -- Yang

it comes.

I do want to see if we can accomplish as much as possible today with Ms. Yang and her testimony. So I will provisionally admit Employer Exhibit 8 subject to any en camera inspection I perform on the larger document, which then will enable the union to determine whether this is, in fact, a fair and accurate copy and complete copy of what it purports to be. Okay?

MR. MINTZ: The only other thing I might ask the witness on voir dir is to describe what the underlying documents are that were related to this document and her investigation.

THE WITNESS: Certainly.

The underlying document comes from a computer forensics report of all computers that we investigated in this matter.

Q. Is there a document that has your recommendations or your analysis or your conclusions?

A. There is such a document.

MR. MINTZ: Okay, I would also like to

see that document.

MS. MOONEY: I preserve our objection for the record.

THE ARBITRATOR: It is preserved. It's understood, the employer believes the document to be privileged.

We will, before leaving today, set up some mechanism so that I can do an en camera inspection before we are ready for all of -- or at least to conclude this witness's cross-examination. Okay?

MS. MOONEY: I will, as I said, I need to consult with corporate legal with respect to your ruling, but I understand your ruling, and I would like to proceed now with --

THE ARBITRATOR: Yes, go ahead.

MS. MOONEY: Thank you.

DIRECT EXAMINATION

BY MS. MOONEY:

Q. All right, Ms. Yang, let's look at Employer 8, please. If you look at the second to last full paragraph on the first page, you indicate that evidence was found that Mr. Pinkava had copied other movies.

C E R T I F I C A T E

STATE OF NEW JERSEY)
: ss.
COUNTY OF MONMOUTH)

I, PENNY SHERMAN, a Notary Public within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the proceedings taken on June 23, 2010.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 2010.

____

PENNY SHERMAN

In Nre THE WALT DISNEY CO., v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Mooney Declaration

Exhibit 2

Mooney, Mary

From: Mooney, Mary
Sent: Wednesday, February 03, 2010 6:15 PM
To: Jim Nolan
Subject: RE: Joel Goldberg

Certainly. I will reach out to him during this shift this evening (Midnight to 8 a.m.).

Mary Mooney - Senior Counsel, Labor Relations - ABC, Inc. - 77 West 66th Street - New York, N.Y. 10023
Phone: 212.456.7532 Fax: 212.456.1003

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-----Original Message-----
From: Jim Nolan [mailto:nolanjames@verizon.net]
Sent: Wednesday, February 03, 2010 5:56 PM
To: Mooney, Mary
Subject: RE: Joel Goldberg

I am guessing that u will tell him ?

-----Original Message-----
From: Mooney, Mary <Mary.Mooney@abc.com>
Sent: Wednesday, February 03, 2010 5:43 PM
To: Jim Nolan <jnolan@nabet16.org>
Subject: Joel Goldberg

Jimmy -

I just left a message on your voicemail. The investigators from Burbank plan to interview Joel at 11 a.m. on Friday, February 5th. Joel is required to attend in person at that time. I will be reaching out to him as well.

I am notifying you in the event Joel requests Union representation. Feel free to attend if you wish.

Mary

[The entire original message is not included]

In Nre THE WALT DISNEY CO., v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Mooney Declaration

Exhibit 3

abc inc.

Mary Mooney
Senior Counsel
Labor Relations

July 9, 2010

BY FAX

David A. Mintz, Esq.
Weissman & Mintz
80 Pine Street, 33rd Floor
New York, N.Y. 10005

Re: AN 10-11 (S. Pinkava Termination)

Dear David:

Pursuant to Wednesday's conference call with Impartial Umpire Weinstock, and without prejudice to the Company's objections to the Union's supplemental requests for information in connection with the above-referenced arbitration, we enclose the following documents:

- The MPAA's January 14, 2010 report of its interview with Joel Goldberg which was provided by NBC Universal on January 15, 2010. Ex. 1.
- The results of the e-mail search Ms. Yang described on Tr. 79. Ex. 2.
- Ms. Yang's notes of her interviews and conversations with Joel Goldberg (Ex. 3), David Chernak (Ex. 4), Francina Radford (Ex. 5), Susie Morris (Ex. 6), Tim Mulrenan, (Ex. 7), Zenon Kocylowsky (Ex. 8), Nancy Ross (Ex. 9), Karen Steckler (Ex. 10), and Scott Pinkava (Ex. 11).
- A list provided by Mr. Goldberg of the screeners he received. (Ex. 12)
- Mr. Gruber's "Report of Computer Forensic Examination" of "55 Computer Workstations" dated January 25, 2010, which includes the metadata artifacts of interest pertaining to Jacklyn Ventura, Karen Steckler, and David Chernak. (Ex. 13)
- Ms. Yang's report entitled,"Computer Forensic Evidence for David Chernak." (Ex. 14)
- Mr. Gruber's "Report of Computer Forensic Examination" of the MAYA 1_HP dated February 9, 2010, and Appendices. (Ex. 15) Employer

77 West 66th Street, New York, NY 10023-6201
p: 212.456.7532 f: 212.456.1003 mary.mooney@abc.com

Exhibit 8 ("Computer Forensic Evidence for Scott Pinkava") was created from this report.

With respect to the underlying forensic evidence obtained in this investigation, we do not have the ability to view, transmit, copy or print this data because it is contained in a format that is not compatible with our network. In order to view it, we would have to install an Encase software program at an estimated cost of $5,000. The Union would also be required to install Encase on a separate large hard drive in order to view it.

If the Union wishes to review this data, we will try to make other suitable arrangements to view it in Florida.

However, there are some additional data compilations that we are able to provide electronically. I will forward to you shortly the results of a Windows Registry Analyzer performed on the MAYA 1_HP (the broadcast computer Mr. Pinkava used). As you will see, the size of the document (149 pages) and formatting of the data does not lend itself to printing.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Mary Mooney

Enclosures

In Nre THE WALT DISNEY CO., v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Mooney Declaration

Exhibit 4

----- Original Message -----
From: Mooney, Mary
To: David A. Mintz
Cc: Quinn, Sean T
Sent: Thursday, July 08, 2010 1:14 PM
Subject: RE: Pinkava Hearing

David -

The Arbitrator made it clear that Ms. Yang will not be compelled to travel to New York for a third day for this hearing. In light of that, I do not agree with your statement below.

Regarding your information request, we will provide you in advance of Tuesday's hearing the information we agreed to provide during yesterday's call with the Arbitrator. However, your request for additional items below is not appropriate. For example, we never agreed to produce "recommendations" and the Arbitrator ruled that we are not required to.

Mary

Mary Mooney - Senior Counsel, Labor Relations - ABC, Inc. - 77 West 66th Street - New York, N.Y. 10023
Phone: 212.456.7532 Fax: 212.456.1003

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From: David A. Mintz [mailto:dmintz@weissmanmintz.com]
Sent: Thursday, July 08, 2010 11:54 AM
To: Mooney, Mary
Cc: Quinn, Sean T.
Subject: Pinkava Hearing

Mary Mooney. In order to make sure that Ms. Yang does not have to return unnecessarily for a third day of hearing, please ask her to bring to New York all reports, recommendations, summaries, analyses, conclusions and notes regarding the investigation that she conducted at ABC and with ABC employees. I understand that the parties have a dispute over one of Ms. Yang's reports where the Company claims the lawyer-client privilege and which may be the subject of a subpoena requested by the Union. But there may be other documents related to the investigation about which no privilege claim will attach and which may need to be produced during the course of the examination of Ms. Yang. Thank you.

David A. Mintz, Esq.
Weissman & Mintz LLC
80 Pine Street, 33rd Floor
New York, New York 10005
(212) 509-0918
(212) 425-1588 (fax)
dmintz@weissmanmintz.com

In Nre THE WALT DISNEY CO., v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Mooney Declaration

Exhibit 5

ARBITRATION

In the matter between:)
)
NATIONAL ASSOCIATION OF) No. ANIO-11
BROADCAST EMPLOYEES AND)
TECHNICIANS -- CWA LOCAL)
16, AFL-CIO, CLC)
)
-and-)
)
AMERICAN BROADCAST)
COMPANY, INC.)
)
)
)
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77 West 66th Street

New York, New York

Tuesday, July 13, 2010

B E F O R E:

BONNIE SIBER-WEINSTOCK, Arbitrator

Reported by:
PENNY SHERMAN
JOB NO. 311556

Cross -- Yang

Q. But he did tell you that he suspected that other employees in the graphics department were copying the screeners and distributing it to their friends?

A. He did tell us that he suspected that.

Q. And you know that Mr. Goldberg was suspended for three days?

A. I am aware of that.

Q. Did you recommend the three-day suspension?

A. I did not recommend -- I don't take part in the disciplinary action.

Q. As far as you know, Mr. Goldberg was honest with you in your interviews?

A. I think he tried to the best of his ability, but he was very unsure of a lot of details, and hence, we had to talk to him several times. So he did give us some contradicting explanations from time to time.

Q. But he, in his efforts to tell you what he knew, he never told you that he had anything to do with Mr. Pinkava, correct?

A. No, he never mentioned Mr. Pinkava's name.

Cross -- Yang

MS. MOONEY: Objection. Ms. Yang is not an attorney.

THE ARBITRATOR: Sustained.

MR. MINTZ: Well, I mean --

THE ARBITRATOR: She is also not the decision maker. She didn't recommend the decision, so her opinion is nothing more than her opinion. However schooled it may be, it is not the basis of what happened to Mr. Pinkava.

MR. MINTZ: Right. But the point is, if Ms. Yang, who is investigating copyright laws and violations, can't explain the difference between fair use and copying, legal copying, and Ms. Mooney objects on the ground that she is not an attorney, that's a fair objection, the fact --

THE ARBITRATOR: You've got to stop. You are walking right into exactly why the contents of the report that you seek is privileged.

Q. Well, let me ask you this, and you can just answer. If I show you a DVD, can you advise us whether that's permissible or not permissible,

Recross -- Gruber

C E R T I F I C A T E

STATE OF NEW JERSEY)

: ss.

COUNTY OF MONMOUTH)

I, PENNY SHERMAN, a Notary Public within and for the State of New Jersey, do hereby certify that the within is a true and accurate transcript of the proceedings taken on JULY 13, 2010.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of July, 2010.

____

PENNY SHERMAN